

JOINT COMMITTEE ON ADMINISTRATIVE RULES

ILLINOIS GENERAL ASSEMBLY

CO-CHAIR:
SEN. MAGGIE CROTTY

CO-CHAIR:
REP. BRENT HASSERT

EXECUTIVE DIRECTOR:
VICKI THOMAS



700 STRATTON BUILDING
SPRINGFIELD, ILLINOIS 62706
271/785-2254

SEN. J. BRADLEY BURZYNSKI
SEN. JAMES CLAYBORNE, JR.
SEN. RANDY HULTGREN
SEN. DAN RUTHERFORD
SEN. IRA SILVERSTEIN
REP. JOHN FRITCHEY
REP. LOU LANG
REP. DAVID R. LEITCH
REP. DAVID MILLER
REP. ROSEMARY MULLIGAN

MINUTES

September 18, 2007

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on September 18, 2007 at 11:00 a.m. in Room C-1 of the Stratton Office Building in Springfield.

Co-Chair Crotty announced that the policy of the Committee is to allow only representatives of State agencies to testify orally on any rule under consideration at Committee hearings. Other persons are encouraged to submit their comments in writing.

ATTENDANCE ROLL CALL

X Senator Bradley Burzynski	Representative John Fritchey
X Senator James Clayborne, Jr.	X Representative Brent Hassert
X Senator Maggie Crotty	X Representative Lou Lang
X Senator Randy Hultgren	X Representative David Leitch
X Senator Dan Rutherford	X Representative David Miller
X Senator Ira Silverstein	X Representative Rosemary Mulligan

APPROVAL OF THE MINUTES OF THE PREVIOUS JCAR MEETING

Representative Leitch moved, seconded by Representative Mulligan, to approve the minutes of the August 14, 2007 meeting. The motion passed unanimously.

REVIEW OF PROPOSED RULEMAKINGS

Health Facilities Planning Board – Narrative and Planning Policies (77 Ill. Adm. Code 1100; 31 Ill. Reg. 2548)

Representative Miller moved, seconded by Senator Rutherford, that JCAR and HFPB agree to extend the Second Notice Period for the rulemaking titled Narrative and Planning Policies (77 Ill. Adm. Code 1100; 31 Ill. Reg. 2548) for an additional 45 days so that HFPB can further respond to questions from the public and JCAR. The motion passed unanimously.

Health Facilities Planning Board – Health Facilities Planning Procedural Rules (77 Ill. Adm.

Code 1130; 31 Ill. Reg. 3679)

Representative Hassert moved, seconded by Senator Burzynski, that JCAR and HFPB agree to extend the Second Notice Period for the rulemaking titled Health Facilities Planning Procedural Rules (77 Ill. Adm. Code 1130; 31 Ill. Reg. 3679) for an additional 45 days so that HFPB can more fully respond to questions from JCAR. The motion passed unanimously.

REVIEW OF EMERGENCY RULEMAKINGS

Department of Central Management Services – Pay Plan (80 Ill. Adm. Code 310; 31 Ill. Reg. 12608) (Emergency)

Senator Hultgren, seconded by Senator Silverstein, moved that JCAR object to the Department of Central Management Services using emergency rulemaking to adopt rules titled Pay Plan (80 Ill. Adm. Code 310; 31 Ill. Reg. 12608) because any emergency situation that has arisen is agency created. The memorandum of agreement affecting Conservation Police lieutenants was signed in March 2007, but CMS did not adopt rules implementing this change until August 2007. The motion passed unanimously.

Department of Finance and Professional Regulation – Supplemental Reports for Accident and Health Insurers (50 Ill. Adm. Code 937; 31 Ill. Reg. 10699) (Emergency)

Representative Lang, seconded by Senator Rutherford, moved that JCAR object to and suspend the Department of Financial and Professional Regulation's emergency rule titled Supplemental Reports for Accident and Health Insurers (50 Ill. Adm. Code 937; 31 Ill. Reg. 10699) because, contrary to Section 5-45 of the Illinois Administrative Procedure Act, no emergency situation existed that warranted adoption of an emergency rule. JCAR finds, pursuant to Section 230.550(a)(3)(A) of the Committee's operational rules, that the rulemaking represents a threat to the public interest by imposing new costs without the opportunity for prior review and comment by the affected public.

The agency was represented by Michael McRaith, Director of the DFPR Division of Insurance. The Director stated his understanding that JCAR rules authorize the Committee to suspend an emergency rule only if that rule poses a serious, immediate threat to the public interest, safety and welfare. This rule would require health insurance companies to complete a one page form on a quarterly basis. They currently report to DFPR every quarter. They would be asked to add a one page document that says this (holding up a paper). The issue is the affordability of health insurance, a problem that is becoming increasingly acute. In Illinois, we do not regulate premiums charged on the front end. Most states do so. Illinois has chosen to let the market determine what is an appropriate premium. Most states also collect information so they can evaluate whether the market is working in their state. In Illinois, we do not. The Director stated that it is an embarrassment to him that he does not have this information at hand to aid in his regulation of this industry. This issue is not going to go away. The Department will continue with its efforts to adopt the identical proposed rulemaking. It is clear the Department has the authority to promulgate this policy. While this problem is becoming increasingly acute, some insurance companies are making record setting profits, and their executives are making record

setting salaries. When I meet with legislators, I am asked, "How much does a premium cost for a small business in my district?" We don't know. We don't know whether the companies are complying with existing rules regarding small business insurance premiums. They certify to us once a year, but we don't know how much the premium actually is. We are operating in the state at a very significant information deficit, and that is the reason why I promulgated this rule as an emergency. If we go through the regular rulemaking process, some say the earliest we should be receiving this information from the industry is March 31, 2008, when you will again be in the middle of a legislative session without an understanding of whether the market is actually working in Illinois or are we relying on the mythology of a market driven health insurance market. Insurance companies are making record breaking profits while your constituents have seen their premiums increase 87% in 6 years. Wages have gone up only 18% in that time period and inflation has only been 20%. This rule is about the collection of information from health insurers. That information is far from creating a serious, immediate threat to the public health, safety and welfare. I look forward to meeting with each of you to talk about the importance of this quarterly data collection, which we will continue to pursue.

Co-Chair Crotty commented that the motion was not about the advisability of collecting this information, but whether the situation represents what the IAPA considers to be an emergency.

Representative Mulligan stated that she has told the Director that she would also like to have access to this information, but disagreed with the use of emergency rulemaking. The Governor announced his healthcare plan in March, and the Adequate Health Care Task Force report has been available since December. In addition, this Governor has given carte blanche to the unions to organize healthcare workers, and that increases costs. With those time frames, you could have sought legislation, built consensus and/or utilized the regular, not emergency, rulemaking process. To drop this on companies peremptorily causes an undue burden. While many of us would like to have this information, and are seeking improvements in the healthcare system, we don't believe use of emergency rulemaking is the way to be doing it.

Director McRaith responded that it was during the deliberations of the Task Force that the Division was asked for many pieces of information it did not have. One component of the Task Force report was collection of data. Illinois is ranked as one of the worst states in the country for its inability to collect health insurance data. For this reason, the Department deemed this rulemaking an emergency.

Representative Mulligan asked why this became an emergency in July when the report has been available since December and the Governor issued his call for universal health care in March. This appears to be a punitive measure by the Administration.

The Director reiterated that the Department plans to continue with the proposed rulemaking, and added that the lack of information was highlighted throughout the spring and summer legislative session. On June 30, companies reported their record setting profits. They quarterly tell the stock analysts that they return profits to shareholders because they price their premiums above medical inflation and they reduce their loss ratios, meaning they pay less in claims than they collect in premiums. This prompted the determination that this is indeed an emergency.

Representative Mulligan stated that, if the Director's information is accurate, perhaps we don't need universal health care, but rather insurance reform so that more businesses can purchase insurance for their employees. She reiterated her comments about time lines.

Representative Miller asked why the Director believed the information could not be gathered, through proposed rulemaking, until late March.

Director McRaith responded that, when rules are adopted, the times would accommodate a reasonable start-up period. By the time the agency can take the proposed rule to Second Notice, he anticipates a starting date of March 31. He anticipates the earliest the proposed rulemaking could be considered by JCAR is the November meeting. This would allow reporting by the insurance companies either December 31 or March 31. The Department will go for the earliest date on which it can reasonably request the information.

Senator Clayborne commented that he supports the collection of this data, whether by rule or legislation.

The motion passed on a rollcall vote of 11-0-0.

Department of Natural Resources – Youth Hunting Seasons (17 Ill. Adm. Code 685; 31 Ill. Reg. 12096) (Emergency)

Senator Clayborne, seconded by Representative Lang, moved that JCAR object to the Department of Natural Resources' use of emergency rulemaking to adopt rules titled Youth Hunting Seasons (17 Ill. Adm. Code 685; 31 Ill. Reg. 12096) because any emergency situation that has arisen is agency created. Since this Part is updated annually, DNR should have anticipated the need for these amendments. The motion passed unanimously.

CERTIFICATION OF NO OBJECTION

Senator Rutherford moved, seconded by Representative Lang, that the Committee inform the agencies to whose rulemakings the Committee did not vote an Objection, or did not remove from the No Objection List, that the Committee considered their respective rulemakings at the monthly meeting and, based on the Agreements for modification of the rulemakings made by the agencies, no Objections will be issued. The motion passed unanimously.

INTRODUCTION OF NEW MEMBER

Co-Chair Crotty welcomed Representative Lou Lang to the JCAR membership.

OCTOBER MEETING DATE

Co-Chair Crotty announced that the next meeting was scheduled for Wednesday, October 10, 2007, 11:00 a.m., Room C-1, Stratton Office Building, Springfield IL.

ADJOURNMENT

Senator Clayborne moved, seconded by Senator Burzynski, to adjourn the meeting. The motion passed unanimously.

Min:0709Sep